

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

Assessment and Collection of Regulatory Fees for
Fiscal Year 2007

MD Docket No. 07-81

**REPORT AND ORDER
AND
FURTHER NOTICE OF PROPOSED RULEMAKING**

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By the Commission: Commissioner Copps approving in part, concurring in part and issuing a statement; Commissioner Adelstein concurring and issuing a statement.

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I. INTRODUCTION

1. In this Report and Order and Further Notice of Proposed Rulemaking, we conclude a proceeding to collect \$290,295,160 in regulatory fees for Fiscal Year ("FY") 2007, pursuant to section 9 of the Communications Act of 1934, as amended (the "Act"). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.¹ The Further Notice of Proposed Rulemaking ("FNPRM") seeks comment on the appropriate fee structure for Broadband Radio Service ("BRS").

2. We retain the established methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. We have found that the assessment methodology adopted in prior regulatory fee cycles has provided a satisfactory means for collecting the Commission's annual appropriations. In addition to the assessment methodology, we retain and enhance our administrative measures used for notification and assessment of regulatory fees as in previous years, such as generating bills and pre-completed assessment notifications for certain regulatees. Beginning this year, we expand our billing efforts to include licensees of earth stations and cable television relay service ("CARS") stations. We will also apply regulatory fee obligations to interconnected Voice over Internet Protocol ("VoIP") providers. Finally, we wish to take this opportunity to strongly encourage regulatees to electronically file their FY 2007 regulatory fee payments via Fee Filer.

3. The Commission is obligated to collect \$290,295,160 in regulatory fees during FY 2007 to fund the Commission's operations. Consistent with our established practice, we intend to collect these regulatory fees during a filing window in September 2007 in order to collect the required amount by the end of our fiscal year.

II. REPORT AND ORDER

A. FY 2007 Regulatory Fee Assessment Methodology

4. On April 18, 2007, we released a Notice of Proposed Rulemaking seeking comment on regulatory fee issues.² As noted in the *FY 2007 NPRM*, the section 9 regulatory fee proceeding is an annual rulemaking process intended to ensure the Commission collects the fee amount required by Congress each

¹ 47 U.S.C. § 159(a).

² See *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Notice of Proposed Rulemaking, 22 FCC Rcd 7975 (2007) ("FY 2007 NPRM").

year. In the *FY 2007 NPRM*, we proposed to largely retain the section 9 regulatory fee methodology used in the prior fiscal year. We received ten comments and six reply comments.³ We address the issues raised in our *FY 2007 NPRM* below.

1. Development of FY 2007 Regulatory Fees

a. Calculation of Revenue and Fee Requirements

5. In our FY 2007 regulatory fee assessment, we use essentially the same section 9 regulatory fee assessment methodology adopted for FY 2006. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our FY 2007 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Attachment C. For FY 2007, we will use the FY 2006 congressionally mandated amount as the basis for calculating the unit fees for each fee category. To collect the \$290,295,160 required by law, we adjust the FY 2006 amount downward by approximately 2.84 percent.⁴ Consistent with past practice, we then divide the FY 2007 amount by the number of payment units in each fee category to determine the unit fee.⁵ As in prior years, for cases involving small fees (*e.g.*, licenses that are renewed over a multiyear term), we divide the resulting unit fee by the term of the license, and then round these unit fees consistent with the requirements of section 9(b)(2).

b. Additional Adjustments to Payment Units

6. In calculating the FY 2007 regulatory fees listed in Attachment D, we further adjusted the FY 2006 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.⁶ Where appropriate, we adjusted and rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as

³ See Attachment G for the list of commenters and abbreviated names.

⁴ The percentage decrease of approximately 2.84 percent is based on the total amount of regulatory fees that was mandated by Congress to be collected in FY 2006, which included an amount of \$288,771,000 in regulatory fees pursuant to section 9 of the Act and an additional \$10,000,000 as required by section 3013 of the Deficit Reduction Act (Public Law 109-171). Together, the total amount of regulatory fees mandated by Congress to be collected in FY 2006 was \$298,771,000. Also, the decrease in regulatory fee payments of approximately 2.84 percent in FY 2007 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted for each individual service category each year by the number of estimated payment units in a service category, and then adjusted for rounding, the actual fee will likely differ by an amount more or less than 2.84 percent. For example, in industries where the number of payment units is declining, the per-unit regulatory fee amount for FY 2007 may actually be more than the amount for FY 2006.

⁵ In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service ("CMRS") Cellular/Mobile and CMRS Messaging), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, subscriber fee, *etc.*

⁶ The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"). We also consulted industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast and Annual CMRS Competition Report*. For additional information on source material, see Attachment B.

waivers and exemptions that may be filed in FY 2007, and fluctuations in the number of licensees or station operators due to economic, technical, or other reasons. Therefore, when we state that our estimated FY 2007 payment units are based on FY 2006 actual payment units, the number may have been rounded or adjusted slightly to account for these variables.

7. We consider additional factors in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.⁷

2. Commercial Mobile Radio Service Messaging Service

8. In the *FY 2007 NPRM*, we proposed to continue our policy of maintaining the CMRS Messaging Service regulatory fee at the rate that was established in FY 2002 (*i.e.*, \$0.08 per subscriber), noting that the subscriber base in this industry has declined 79 percent from 40.8 million to 8.3 million from FY 1997 to FY 2006.⁸ The only commenters addressing this issue, AAPC and USA Mobility, state that maintaining the fee amount at \$0.08 per subscriber is the minimum action to take and that the Commission should consider reducing the fee amount.⁹

9. We continue to believe that maintaining the CMRS Messaging regulatory fee at the rate established in FY 2002, rather than allowing it to increase, is the appropriate level of relief to be afforded to the messaging industry. We are cognizant of the financial hardship that could be caused by increasing the fee (shrinking profit margins, additional loss of subscribers, reduced revenue, *etc.*) for this service category. Therefore, we adopt our proposal to maintain the CMRS Messaging Service regulatory fee for FY 2007 at \$0.08 per subscriber.

3. International Bearer Circuits

10. In our *FY 2006 NPRM*,¹⁰ we noted that VSNL Telecommunications (US) Inc. ("VSNL") had filed a Petition for Rulemaking urging the Commission to revise its regulatory fee methodology for bearer circuits;¹¹ and that we issued a Public Notice designating the proceeding as RM-11312 and requesting comment on the Petition.¹² We stated in our *FY 2006 Report and Order* that the issues presented in the Petition warrant consideration separately from the Commission's annual regulatory fee proceeding.¹³ In our *FY 2007 NPRM*, we received a set of joint comments filed by seven submarine cable

⁷ In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee in that respective service category. For example, the regulatory fee for a Construction Permit for an AM radio station will never be more than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

⁸ See *FY 2007 NPRM*, 22 FCC Rcd at 7978, ¶ 7.

⁹ AAPC Comments at 1; USA Mobility Comments at 3. No commenters opposed our proposal.

¹⁰ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Notice of Proposed Rulemaking, 21 FCC Rcd 3708, 3718, n.20 (2006) ("*FY 2006 NPRM*").

¹¹ See Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed Feb. 6, 2006) ("VSNL Petition").

¹² See Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice*, Report No. 2759 (rel. Feb. 15, 2006).

¹³ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Report and Order, 21 FCC Rcd 8092, 8098-99, ¶ 18 (2006) ("*FY 2006 Report and Order*").

landing licensees urging the Commission to take similar action.¹⁴ We reiterate that the issues presented in the Petition warrant consideration separately from the Commission's annual regulatory fee proceeding.¹⁵

4. Interconnected Voice over Internet Protocol Service Providers

11. In the *FY 2007 NPRM*, we observed that providers of interconnected VoIP¹⁶ services are now required to contribute to the Universal Service Fund ("USF")¹⁷ and we tentatively concluded that the interconnected VoIP providers should also pay regulatory fees.¹⁸ Our tentative conclusion was based on the mandate in section 9 of the Act that the Commission "assess and collect regulatory fees to recover the costs" of regulatory activities¹⁹ as well as our analysis in the *2006 Interim Contribution Methodology Order*. In this Report and Order we adopt our tentative conclusion in the *FY 2007 NPRM* and require interconnected VoIP providers to pay FY 2007 regulatory fees based on revenues reported on the FCC Form 499-A at the same rate as interstate telecommunications service providers ("ITSPs").²⁰

a. Jurisdiction

12. By way of recent background, in the *2006 Interim Contribution Methodology Order*, the Commission, among other things, established universal service contribution obligations for providers of interconnected VoIP service based on its permissive authority under section 254(d) of the Act and its ancillary jurisdiction under Title I of the Act.²¹ The Commission noted that significant growth in the number of VoIP subscribers in recent years is expected to continue.²² In addition, the Commission observed that the USF revenue base had been diminishing and the contribution factor used to determine contributor payments into the fund has risen considerably as a result.²³ Interconnected VoIP service is increasingly used to replace traditional telephone service and, as the interconnected VoIP service industry continues to grow and to attract customers who previously relied on traditional voice service, it was inappropriate to exclude interconnected VoIP service from universal service contribution requirements.²⁴ In its *Vonage* decision, the D.C. Circuit upheld the Commission's decision to impose USF fees on

¹⁴ See Joint Comments at 1.

¹⁵ We incorporate the instant comments of the seven cable landing licensees into the VSNL Petition proceeding, RM-11312.

¹⁶ See 47 C.F.R. § 9.3 for the definition of interconnected VoIP service.

¹⁷ See *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, 21 FCC Rcd 7518, 7536-543, ¶¶ 34-49 (2006) ("*2006 Interim Contribution Methodology Order*") (finding that interconnected VoIP service providers are "providers of interstate telecommunications" under section 254(d) and asserting the Commission's permissive authority to require interconnected VoIP service providers to contribute to the preservation and advancement of universal service), *aff'd in relevant part*, *Vonage Holdings Corp., v. FCC*, No. 06-1276 (D.C. Cir. 2007) ("*Vonage*").

¹⁸ *FY 2007 NPRM*, 22 FCC Rcd at 7979, ¶ 10.

¹⁹ 47 U.S.C. § 159(a)(1).

²⁰ Interconnected VoIP providers will pay FY 2007 regulatory fees during a separate filing window (to be determined later), most likely in 2008. For FY 2008, interconnected VoIP providers will be required to pay regulatory fees in the same filing window as other entities.

²¹ *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7538-543, ¶¶ 38-49.

²² *Id.*, 21 FCC Rcd at 7528-29, ¶ 19.

²³ *Id.*

²⁴ *Id.*, 21 FCC Rcd at 7541, ¶ 44.

interconnected VoIP providers.²⁵ Prior to the 2006 *Interim Contribution Methodology Order*, the Commission asserted its ancillary jurisdiction under Title I of the Act to require providers of interconnected VoIP services to supply 911 emergency calling capabilities to their customers.²⁶ More recently, the Commission also extended the section 222 customer proprietary network information (“CPNI”) obligations, disability access obligations, and telecommunications relay services (“TRS”) requirements to providers of interconnected VoIP services using its Title I authority.²⁷

13. Consistent with our previous orders, we conclude that Title I of the Act gives us direct authority to impose regulatory fees on providers of interconnected VoIP services. In particular, we have previously found, based on sections 1 and 2(a) of the Act, coupled with the definitions set forth in section 3(33) (“radio communication”) and section 3(52) (“wire communication”), that interconnected VoIP services are covered by the Commission’s general jurisdictional grant.²⁸ Section 1 of the Act states that the Commission is created “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges,” and that the agency “shall execute and enforce the provisions of th[e] Act.”²⁹ Section 2(a), in turn, confers on the Commission regulatory authority over all interstate communication by wire or radio.³⁰ As we have previously observed, interconnected VoIP services are covered by the statutory definitions of “wire communication” and/or “radio communication” because they involve “transmission of [voice] by aid of wire, cable, or other like connection . . .” and/or “transmission by radio . . .” of voice.³¹ Therefore, these services come within the scope of the Commission’s subject matter jurisdiction under section 2(a) of the Act. Accordingly, section 9 of the Act gives the Commission direct authority to impose regulatory fees on interconnected VoIP providers. Specifically, section 9 states that the Commission “shall assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information

²⁵ *Vonage* at 15. Because it found that the Commission has authority under section 254(d) of the Act to impose USF contribution obligations on interconnected VoIP providers, the court did not decide whether the Commission also could have imposed this obligation pursuant to its Title I ancillary jurisdiction. *Id.* at 15-16.

²⁶ See *E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) (“*VoIP 911 Order*”); 47 C.F.R. Part 9. The Commission also concluded that providers of interconnected VoIP services are subject to the Communications Assistance for Law Enforcement Act (“CALEA”). See *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, ¶ 8 (2002) (“*CALEA First Report and Order*”), *aff’d*, *American Council on Education v. FCC*, 451 F.3d 226 (D.C. Cir. 2006).

²⁷ *Implementation of the Telecommunications Act of 1996, Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (“*EPIC CPNI Order*”); *IP-Enabled Services, Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WC Docket No. 04-36, WT Docket No. 96-198, Report and Order, FCC 07-110 (rel. June 15, 2007) (“*VoIP TRS Order*”).

²⁸ See, e.g., *VoIP 911 Order*, 20 FCC Rcd at 10261-62, ¶ 28.

²⁹ 47 U.S.C. § 151.

³⁰ See 47 U.S.C. § 152(a) (stating that the provisions of the Act “shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio. . .”).

³¹ *VoIP 911 Order*, 20 FCC Rcd at 10261-62, ¶ 28.

services, and international activities.”³² In light of the many and increasing resources the Commission now dedicates to VoIP, the Commission should recover costs from interconnected VoIP providers.³³

14. We disagree with the VON Coalition’s argument that we do not have jurisdiction to extend regulatory fees to interconnected VoIP providers because regulatory fees can only be assessed on entities subject to licensing or certification requirements.³⁴ On the contrary, section 9 gives the Commission broad authority to impose regulatory fees. Section 9 does not limit the regulatory fee requirement to licensees. Moreover, the Commission has not, in the annual regulatory fee orders or otherwise, specifically limited the implementation of section 9 to “licensees.” To construe section 9 as narrowly as the VON Coalition proposes would prohibit the Commission from recovering costs from providers that impose costs on the Commission, simply because they were not licensees and would unreasonably lighten regulatory costs on certain industry segments at the cost of others.

b. Basis and Rate

15. Having concluded that the Commission has authority to assess regulatory fees on interconnected VoIP providers, we must determine how to assess those fees. Specifically, we must determine whether to base fees on revenues or subscribers, or some other basis, and at what rate. We conclude that interconnected VoIP providers should pay regulatory fees based on their interstate and international revenue at the same rate as ITSPs.

16. In the *FY 2007 NPRM*, we sought comment on whether interconnected VoIP providers should be assessed regulatory fees based on revenues, which would be consistent with the regulatory fee methodology used for interstate telecommunications service providers, or if we should use a numbers-based approach, which would be consistent with the methodology used for CMRS.³⁵ Most commenters addressing this issue favor a numbers-based or subscriber-based approach, as opposed to a revenue-based approach.³⁶ We instead adopt a revenue-based approach as adopted in the *2006 Interim Contribution Methodology Order* for USF contributions. The Commission’s conclusion that interconnected VoIP service is more closely analogous to wireline toll service than to CMRS guides us here.³⁷ As a result, we will use revenue as the basis for imposing regulatory fees on interconnected VoIP providers instead of a subscriber-based approach, which is the basis for wireless providers.³⁸

17. Commenters contend that broadband providers often offer a bundle of services to consumers and it may be difficult to separate the telecommunications service revenues from the other

³² 47 U.S.C. §159(a)(1).

³³ See, e.g., nn.26-27 *supra*. Although we find that section 9 by its terms allows us to impose regulatory fees on providers of interconnected VoIP services, we also find, consistent with our prior orders, that we have ancillary authority under Title I to impose these fees. See, e.g., *VoIP 911 Order*, 20 FCC Rcd at 10261-63, ¶¶ 26-29. Interconnected VoIP providers fall within our Title I jurisdictional grant and the assessment of regulatory fees to fund Commission operations is critical to the effective performance of the Commission’s responsibilities.

³⁴ VON Coalition Comments at 6-7; WCA Comments at 3-5 & Reply Comments at 2-3.

³⁵ *FY 2007 NPRM*, 22 FCC Rcd at 7979, ¶ 10.

³⁶ See, e.g., Nuvio Comments at 4; IUB Comments at 2-4; Comcast Comments at 1-2; WCA Comments at 3; NCTA Reply Comments at 2; VON Coalition Reply Comments at 6. Nuvio and VON Coalition suggest that if the Commission adopts a numbers-based assessment, the assessment should be on active numbers and not the inventory of numbers. Nuvio Comments at 4; VON Coalition Reply Comments at n. 16.

³⁷ The D.C. Circuit rejected Vonage’s challenge to that conclusion because Vonage was unable to show why usage patterns for VoIP are more like those for wireless than for wireline toll. *Vonage* at 18.

³⁸ See NTCA Comments at 2.

revenues.³⁹ Consistent with our decision in the *2006 Interim Contribution Methodology Order*, however, interconnected VoIP providers may avoid separating revenue types by using a safe-harbor level of 64.9 percent interstate or international revenues for purposes of calculating regulatory fee obligations.⁴⁰ Interconnected VoIP providers may contribute based on a lesser percentage if they provide supporting traffic studies.⁴¹

18. We also conclude that interconnected VoIP providers will pay regulatory fees on their interstate and international revenues at the same rate as ITSPs. As we stated in the *2006 Interim Contribution Methodology Order*, interconnected VoIP providers offer a service that is almost indistinguishable, from the consumers' point of view, from the service offered by interstate telecommunications service providers.⁴² Further, the explosive growth of the VoIP industry in recent years has resulted in recent Commission actions addressing the service.⁴³ The growth of the VoIP industry and the extent to which VoIP service is used as a substitute for analog voice service have necessitated a number of Commission rulemaking proceedings pertaining to interconnected VoIP services.

19. We recognize that the costs and benefits associated with our regulation of interconnected VoIP providers are not identical as those associated with regulating interstate telecommunications service and CMRS.⁴⁴ For example, at this time interconnected VoIP providers are not subject to the Commission's enforcement authority in most instances and only recently have the Commission's rulemaking activities involved interconnected VoIP providers.⁴⁵ The Commission does not maintain a database system pertaining to interconnected VoIP providers similar to the registration and filing systems for CMRS and wireline carriers.⁴⁶ In addition, interconnected VoIP providers do not receive certain benefits, such as universal service support payments and interconnection rights, as Title II carriers do.⁴⁷ Section 9 is clear, however, that regulatory fee assessments are based on the burden imposed on the Commission, not benefits

³⁹ Nuvio Comments at 4; Iowa Utilities Board Comments at 2-4; Comcast Comments at 1-2; WCA Comments at 3; NCTA Reply Comments at 2. Nuvio suggests that if the Commission adopts a numbers-based assessment, the assessment should be on active numbers and not the inventory of numbers. Nuvio Comments at 4.

⁴⁰ See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7544-45, ¶ 53; *Vonage*, slip op. at 7, 17-19.

⁴¹ Consistent with the *Vonage* decision, interconnected VoIP providers need not at this time obtain pre-approval of their traffic studies. Rather, they must submit any studies upon which they rely no later than the deadline for submitting the FCC Form 499-Q for the same time period. *Vonage*, slip op. at 19-20; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7535, ¶ 32.

⁴² The Commission has determined that interconnected VoIP service is increasingly used to replace analog voice service. See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, ¶ 48.

⁴³ See, e.g., *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541-43, ¶¶ 46-49; *VoIP 911 Order*, 20 FCC Rcd at 10261-266, ¶¶ 26-35; *EPIC CPNI Order* at ¶ 55.

⁴⁴ See WCA Comments at 6; VON Coalition Comments at 15-17 & n.42.

⁴⁵ VON Coalition Comments at 16.

⁴⁶ *Id.*

⁴⁷ VON Coalition Comments at 17; WCA Comments at 6. We note that interconnected VoIP service is currently an eligible service for purposes of the schools and libraries program. In addition, the Commission recently clarified that wholesale telecommunications carriers have interconnection rights under sections 251(a) and (b) of the Act, including when providing wholesale services to interconnected VoIP providers. See *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, DA 07-709 (WCB rel. Mar. 1, 2007).

realized by regulatees.⁴⁸ Interconnected VoIP providers create costs at the Commission by participating in rulemaking proceedings, waiver petitions, and other matters in the wake of our assertion of ancillary jurisdiction under Title I of the Act to require providers of interconnected VoIP services to contribute to the universal service fund, supply 911 emergency calling capabilities to their customers, comply with section 222 CPNI obligations, and comply with our disability access and TRS requirements.⁴⁹ The provision of interconnected VoIP service is a growing industry⁵⁰ and we can reasonably assume that this regulatory burden on the Commission will continue to increase.⁵¹ Thus, this category of service providers should share in the costs of the Commission's regulatory activities in the same manner as ITSPs. Section 9 does not require the Commission to engage in a company-by-company assessment of relative regulatory costs. In any given year, companies grouped in the ITSP category, or other regulatory fee categories, might be the subject of more regulation than others, e.g., merger proceedings. As a result, our responsibility here is to identify the category of regulatory fee payees with which interconnected VoIP providers most closely relate. On this note, we also observe that interconnected VoIP providers are able to offer their services because they interconnect with the PSTN, and they thereby benefit from our substantial regulation of telecommunications service providers.⁵²

20. Because we are adding interconnected VoIP services to our regulatory fee assessments, we conclude that this is a permitted amendment under section 9(b)(3) of the Act. Section 9(b)(4)(B) of the Act in turn requires us to notify Congress 90 days before the change may take effect. We will provide Congress notification upon publication of this order, and will release a public notice once the amendment takes effect, if there is no Congressional objection.

5. Private Land Mobile Radio Service

21. EWA argues that the fee for Private Land Mobile Radio Service ("PLMRS") exclusive use licenses has increased from \$5 per year in 2001 to \$20 per year in 2006, and for PLMRS shared use licenses, the fee has increased from \$5 to \$10 during the same time period.⁵³ EWA further contends that this increase in fee rates is not associated with a corresponding increase in the cost of regulating the PLMRS industry, and as a result, the Commission's FY 2007 proposed Part 90 PLMRS regulatory fee of \$35 (PLMRS Exclusive Use) and \$15 (PLMRS Shared Use) is unjustified.

22. We disagree. In our *FY 2004 Report and Order*, the Commission stated that regulatory fees need not be precisely calibrated on a service-by-service basis to the actual costs of the Commission's regulatory activities for that service.⁵⁴ The Commission stated that, "the initial Schedule of Regulatory Fees that Congress enacted in section 9(g) reflects a 'costs adjusted for benefits' approach permitted under

⁴⁸ Commenters have not attempted to quantify the relative burden imposed on the Commission by interconnected VoIP providers.

⁴⁹ *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541-43, ¶¶ 46-49; *VoIP 911 Order*, 20 FCC Rcd at 10261-266, ¶¶ 26-35; *EPIC CPNI Order* at ¶ 55; *VoIP TRS Order* at ¶ 16.

⁵⁰ *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7528-29, ¶ 19.

⁵¹ We recognize that including interconnected VoIP providers in our regulatory fee schedule at this time will have a minimal impact on the fees assessed other carriers, but this may change as the industry grows and their share of regulatory fees increases.

⁵² In addition, those companies that currently offer their customers both Title II services and interconnected VoIP services may choose to shift customers from the traditional landline service to the interconnected VoIP service in order to reduce the regulatory fee burden.

⁵³ EWA Comments at 2-3.

⁵⁴ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket No. 04-73, Report and Order, 19 FCC Rcd 11662, 11665-67, ¶¶ 6-12 (2004) ("*FY 2004 Report and Order*").

section 9.”⁵⁵ Procedurally, the Commission calculates regulatory fees by proportionally allocating the total amount that must be collected in section 9 regulatory fees (known as “Expected Revenue”), and dividing this allocated amount by the estimated number of units in its respective fee category. In the case of PLMRS (Shared Use and Exclusive Use), the resulting figure is also divided by 10, the length of the term of a PLMRS license. Because PLMRS licenses have a ten-year term, and regulatory fees are not collected again from these licenses until after 10 years have passed, it is possible that in any given year, there may be fewer units that are either renewing their PLMRS licenses or applying for new ones. For example, between FY 2001 and FY 2006, the unit estimates for PLMRS Exclusive Use decreased from 5,500 units (FY 2001) to 2,200 units (FY 2006), a 60 percent reduction, while PLMRS Shared Use unit estimates decreased from 58,000 units (FY 2001) to 25,000 units (FY 2006), a 57 percent reduction.⁵⁶ At the same time that PLMRS (Shared Use and Exclusive Use) unit estimates were decreasing by nearly 60 percent, our congressionally mandated regulatory fees collections amount increased from \$200.1 million (FY 2001) to \$298.8 million (FY 2006), an increase of 49 percent. The combination of an increasing collections amount mandated by Congress combined with a decrease in the number of units resulted in a higher unit fee between FY 2001 and FY 2006 for PLMRS Shared Use and PLMRS Exclusive Use fee categories.

23. We also note that the unit fee increase has been gradual over time. For example, between FY 2001 and FY 2006, the PLMRS Shared Use unit fee remained steady at \$5 per year between FY 2001 and FY 2005, and increased only to \$10 per year beginning in FY 2006. During the same time period, the PLMRS Exclusive Use unit fee remained at \$5 per year in FY 2001 and FY 2002, increased to the level of \$10 per year in FY 2003, FY 2004, and FY 2005, and then increased to \$20 per year in FY 2006. Because these fee increases are based primarily on a declining unit base and an increasing congressional mandate to collect more annual regulatory fees, common factors that contribute to unit fee changes each year, we decline to modify or reduce the PLMRS (Shared Use and Exclusive Use) unit fee as EWA suggests.

B. Administrative and Operational Issues

24. In our *FY 2007 NPRM*, we sought comment on the administrative and operational processes used to collect the annual section 9 regulatory fees. Although these issues do not affect the amount of regulatory fees parties are obligated to submit, the administrative and operational issues affect the process of submitting payment.

1. Use of Fee Filer

25. We did not seek specific comment on the use of our online Fee Filer application in the *FY 2007 NPRM*. We take this opportunity, however, to strongly encourage regulatees to electronically file their FY 2007 regulatory fee payments via Fee Filer,⁵⁷ rather than submitting payment with a completed hardcopy Form 159, Form 159-B, and/or Form 159-W. The benefits of electronically filing via Fee Filer are expeditious payment submissions that are less expensive (no U.S. postage if paying online) and less prone to error. It also results in improved record keeping and payment reconciliation efforts, and reduces paperwork burdens on payers and Commission staff alike.

26. Traditionally, we have received hardcopy Form 159-Cs (Continuation Sheets) from our regulatees needing to make voluminous payment transactions. Our “voluminous payers” will benefit even more so by using Fee Filer. Having expanded our pre-billing initiatives in FY 2007, some regulatees will receive more than one Form 159-B; and some will be obligated to pay for fees that were pre-billed and other fees that were not pre-billed. Fee Filer relieves regulatees of the need to mail several different pre-bills or to follow different filing instructions for different fees; and enables all fee obligations to be paid

⁵⁵ See *FY 2004 Report and Order*, 19 FCC Rcd at 11666, ¶ 8.

⁵⁶ Data derived from regulatory fee Report and Orders for fiscal years 2001-2006.

⁵⁷ Fee Filer can be accessed at <http://www.fcc.gov/fees/feefiler.html>.

simply either online or by following pre-printed instructions on a Fee Filer-produced voucher.

27. We note that Fee Filer accepts electronic credit card transactions of up to \$99,999.99 and ACH payment transactions from a bank account of an unlimited dollar amount. Fee Filer also facilitates payment by check or wire transfer by producing a one-page Remittance Voucher Form 159-E which can be mailed to our lockbox bank.

2. Proposals for Notification and Collection of Regulatory Fees

28. In our *FY 2007 NPRM*, we sought comment on the administrative processes that the Commission uses to notify regulatees and collect regulatory fees. We received no comment on these general processes. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures. Consistent with our established practice, we will provide public notices, fact sheets and all other relevant material on our website at <http://www.fcc.gov/fees/regfees.html> for the FY 2007 regulatory fee cycle. As a general practice, we will not send regulatory fee material to regulatees via surface mail. However, in the event that regulatees do not have access to the Internet, we will mail public notices and other relevant material upon request. Regulatees and the general public may request such information by contacting the FCC Financial Operations HelpDesk at (877) 480-3201, Option 4.

29. As discussed above, we do not send public notices and fact sheets to regulatees en masse. However, we will continue to send specific regulatory fee pre-bills or assessment notifications via surface mail to the select fee categories discussed below.⁵⁸ Pre-bills are hardcopy billing statements that the Commission mails to certain regulatees. In prior years, the Commission only sent pre-bills to ITSPs and satellite space station licensees. The remaining regulatees did not receive pre-bills.

30. In our *FY 2007 NPRM*, we sought comment on expanding our section 9 regulatory fee pre-billing initiatives to include our service categories for earth stations and CARS stations, beginning in FY 2007. We stated that we could accomplish pre-billing for these categories because they are comprised of relatively few payment units (relative to many other categories in our Schedule of Regulatory Fees), and because we maintain licensing databases for both categories.⁵⁹ The ACA supports our proposal to pre-bill earth stations and CARS stations, noting that it can promote timely filings and payments, and further reduce administrative burdens and costs for small cable operators.⁶⁰ We received no comments regarding our proposal. Effective this fiscal year, we will pre-bill our earth station and CARS station service categories.

a. Interstate Telecommunications Service Providers

31. In FY 2001, we began mailing pre-completed FCC Form 159-W assessments to carriers in an effort to assist them in paying their ITSP regulatory fee. The fee amount on FCC Form 159-W was calculated from the FCC Form 499-A worksheet. Beginning in FY 2004, we converted our usage of the FCC Form 159-W from an "assessment of amount due" to a pre-bill. We have successfully used the Form 159-W as a pre-billing instrument in the fiscal years following, and we proposed to continue our ITSP pre-billing initiative in FY 2007 in our *FY 2007 NPRM*. We received no comment on this proposal, and will

⁵⁸ An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounting system as a current debt. A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. See also 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

⁵⁹ See *FY 2007 NPRM*, 22 FCC Rcd at 7981, ¶ 19.

⁶⁰ ACA Comments at 4.

continue to mail pre-bills ITSPs in FY 2007.

32. This fiscal year, we will round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159-W to the nearest dollar. Line 14 must be rounded to a whole dollar amount because this data field is linked to the FCC Form 159 Remittance Advice Block 25A (quantity), which can only accept whole numbers. It logically follows that if line 14 must be rounded, then the form's final line that calculates the total fee owed (line 16) should be rounded to the nearest dollar, as well. Also, rounding lines 14 and 16 will nominally ease the filing and payment burdens of our Form 159-W filers. We received no comment on this administrative change as proposed in our *FY 2007 NPRM*, and will therefore implement the change for FY 2007.

b. Satellite Space Station Licensees

33. Beginning in FY 2004, we mailed regulatory fee pre-bills via surface mail to licensees in our two satellite space station service categories. Specifically, geostationary orbit space station ("GSO") licensees received bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station ("NGSO") licensees received pre-bills requesting regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

34. For FY 2007, we proposed to continue mailing pre-bills for our GSO and NGSO satellite space station categories.⁶¹ We received no comment on this matter, and will continue to mail pre-bills to our GSO and NGSO satellite space station categories.

c. Media Services Licensees

35. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis. The notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative with improved results.⁶² In our *FY 2007 NPRM*, we proposed to continue our assessment initiative for media services licensees this year.⁶³ We received no comment on the proposal.

36. Consistent with procedures used last year, we will mail assessment notifications to licensees to their primary record of contact populated in CDBS (Consolidated Database System) and to their secondary record of contact, if available. We will continue to make the Commission-authorized web site available to licensees to update or correct any information concerning their facilities and to amend their fee-exempt status, if need be.⁶⁴ Licensees opting not to file their fee payment electronically through Fee

⁶¹ See *FY 2007 NPRM*, 22 FCC Rcd at 7980-81, ¶ 17.

⁶² Some of those refinements have been to provide licensees with a Commission-authorized web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. Also, our notifications now provide licensees with a telephone number to call in the event that they need customer assistance. The notifications themselves have been refined so that licensees of fewer than four facilities receive individual fee assessment postcards for their facilities; whereas licensees of four or more facilities now receive a single assessment letter that lists all of their facilities and the associated regulatory fee obligation for each facility.

⁶³ Fee assessments were proposed again to be issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television ("LPTV") Stations, Class A Television Stations, and LPTV Translators/Boosters, to the extent that applicants, permittees and licensees of such facilities do not qualify as government entities or non-profit entities. Fee assessments have not been issued for broadcast auxiliary stations in prior years, nor will they be issued in FY 2007.

⁶⁴ The Commission-authorized web site for media services licensees is <http://www.fccfees.com>.

Filer must submit a completed hardcopy FCC Form 159 with their fee payment; *i.e.*, the assessment notifications cannot be used as a substitute for a completed Form 159.

d. Commercial Mobile Radio Service Cellular and Mobile Services Assessments

37. As we have done in prior years, we will send assessment letters to CMRS providers using Numbering Resource Utilization Forecast ("NRUF") data that is based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and "out").⁶⁵ The letters will not include Operating Company Numbers ("OCNs") with their respective assigned number counts, but rather, OCNs with an aggregate total of assigned numbers for each carrier. As in prior years, carriers will be given an opportunity to amend their subscriber counts listed on the assessment letter.

38. If the number of subscribers on the assessment letter differs from the subscriber count the service provider provided on its NRUF form, the provider may correct its subscriber count by returning the assessment letter or by contacting the Commission and stating a reason for the change, such as the purchase or the sale of a subsidiary, including the date of the transaction, and any other information that will help to justify a reason for the change.

39. If we receive no response or correction to our initial assessment letter, we will expect the provider's section 9 fee payment to be based on the number of subscribers listed on that letter. We will review all amendments to assessment letters and determine whether a change in the number of subscribers is warranted. We will then generate and mail a final assessment letter. The final assessment letter will inform carriers as to whether or not we accept the amended subscriber count.

40. Although an initial and a final assessment letter will be mailed to CMRS providers that have filed an NRUF form, some providers may not be sent assessment letters if they did not file the NRUF form. These providers shall compute their section 9 fee payment using the standard methodology⁶⁶ that is currently in place for CMRS Wireless services (*e.g.*, compute their subscriber counts as of December 31, 2006), and submit their payment accordingly, either via Fee Filer, or attached to a completed hardcopy FCC Form 159. However, regardless of whether a provider receives an assessment letter or calculates its subscriber count independently, the Commission may audit the number of subscribers for which section 9 fees are paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the initial assessment letter, the Commission will assess the carrier for the difference between what was paid and what should have been paid.

41. *Aggregate Subscriber Levels.* Also in our *FY 2007 NPRM*, we noted that last year we eliminated the requirement for CMRS providers to identify their individual call signs when making their section 9 fee payment. This simplified the payment process for all CMRS providers by enabling them to pay their section 9 fees at the aggregate level.⁶⁷ In our *FY 2007 NPRM*, we proposed to continue this practice and we received no comment. We shall therefore continue to allow CMRS providers to pay their section 9 fees at the aggregate subscriber level.

42. *Consolidated CMRS Section 9 Fee Categories.* Finally, in our *FY 2007 NPRM*, we proposed to consolidate the CMRS cellular and CMRS mobile fee categories into one CMRS fee category.

⁶⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket Nos. 05-59 and 04-73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, ¶¶ 38-44 (2005).

⁶⁶ Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe - Commercial Wireless Services for FY 2005* at 1 (rel. Jul. 2005).

⁶⁷ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Report and Order, 21 FCC Rcd 8092, 8105, ¶ 48 (2006).

This action would eliminate the need for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the fee payment process. At one time, the Commission perceived a need to monitor the CMRS cellular and CMRS mobile fee categories separately.⁶⁸ However, we deem this no longer necessary and therefore proposed to reduce administrative burdens on CMRS providers by consolidating the two categories into one. We received no specific comment on this proposal. We will therefore consolidate our CMRS mobile category (which would have been payment type code 0712 in FY 2007) into the CMRS cellular category (payment type code 0711 in FY 2007). On a going forward basis, all CMRS cellular and mobile providers shall make their section 9 fee payments using the Commission's payment type code __11. This procedural change does not affect CMRS Messaging (Paging) providers, who will continue to make their section 9 fee payment using fee code 0713 in FY 2007 and __13 in the outyears.

e. Cable Television Subscribers

43. In our *FY 2007 NRPM*, we proposed to continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier (CUID) basis.⁶⁹ This practice has worked well for the Commission the past three fiscal years and has eased administrative burdens for the cable television industry. One commenter supports this proposal.⁷⁰ We received no opposing comments, and will thereby continue to employ this payment procedure this fiscal year.

44. We also proposed to send an e-mail reminder to addresses populated in the Media Bureau's Cable Operations and Licensing System ("COALS"), as we did last year, to notify recipients of the FY 2007 regulatory fee payment due date and the fee amount for basic cable television subscribers. Cable television operators are required to file their cable-related forms at the Commission via the COALS website. To date, more than 98 percent of all cable operators have their email addresses recorded in the database. One commenter supports this proposal.⁷¹ We received no opposing comments, and will therefore send an e-mail reminder to cable operators again this fiscal year.

45. Sending reminders via e-mail has proven to be an effective practice and we therefore proposed to discontinue our other practice of sending fee assessment letters via surface mail to cable television operators who are on file as having paid regulatory fees the previous fiscal year. One commenter asks the Commission to continue sending fee assessment letters via surface mail to cable operators that serve fewer than 5,000 subscribers, stating that these operators rely exclusively on the U.S. postal service for their day-to-day operations.⁷² We decline the commenter's request. After conducting this assessment initiative for three years, we have concluded that it is inadequate for accurate assessment purposes and we will instead direct the Commission's resources towards more useful fee collection activities. In addition, we note that we make available all relevant regulatory fee material on our website. If regulatees cannot access the Internet to obtain the necessary information for paying their regulatory fees, they may request such information to be sent via surface mail by contacting the FCC Financial Operations HelpDesk at (877) 480-3201, Option 4.

⁶⁸ In our *FY 1998 Report and Order*, the Commission classified Wireless Communications Service ("WCS"), which included Personal Communications Services (Part 24), as a CMRS Mobile Service, stating that CMRS is "an 'umbrella' descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services"⁶⁸ However, beginning in FY 1998, a separate fee code was provided for Personal Communications Service ("PCS") to monitor the number of units in this service category.

⁶⁹ See *FY 2007 NPRM*, 22 FCC Rcd at 7983, ¶ 28.

⁷⁰ ACA Comments at 2.

⁷¹ ACA Comments at 2.

⁷² ACA Comments at 3.

III. FURTHER NOTICE OF PROPOSED RULEMAKING

46. In WT Docket No. 03-66 (the *BRS/EBS Proceeding*), the Commission sought comment on proposed changes to the regulatory fee structure for BRS.⁷³ In 2006, the Commission adopted a new regulatory fee structure for BRS (the *2006 Decision*).⁷⁴ Specifically, as noted in the *FY 2007 NPRM*, the Commission adopted a megahertz-based approach for BRS regulatory fees and, using a concept similar to the Commission's annual scale of regulatory fees for broadcast television stations, established in the *2006 Decision* three rate tiers based on the BTA ranking of each license.⁷⁵

47. In the *FY 2007 NPRM*, we sought comment on the implementation of the new BRS fee structure. Specifically, we invited commenters to suggest a simple method of calculating BRS regulatory fees that incorporates the complexity of using both elements of the *2006 Decision*, namely, the three rate tiers, to be based on the BTA ranking of each license, and the per megahertz fee. In particular, we invited comment on a formula or method for calculating regulatory fees that incorporates the *2006 Decision* in a manner "sensitive to rural operators in less densely populated areas."⁷⁶ WCA, the only commenter addressing this issue, does not object to the Commission seeking comment on the methodology to use in feeing BRS.⁷⁷

48. We clarify that our questions about BRS regulatory fees in the *FY 2007 NPRM* as well in this Further Notice are to implement the *2006 Decision*, and not to revisit the three-tier approach adopted in the *2006 Decision*.

49. Briefly, under the *2006 Decision*, BRS regulatory fees will use a MHz-based formula with three tiers of fees by markets. Instead of a flat fee amount per BRS license, BRS licensees will pay a fee in one of three fee categories based on Basic Trading Areas ("BTA") ranked by population size.⁷⁸ The highest fee will be assessed to licenses in BTAs ranked 1-60, licenses in BTAs ranked 61-200 will have a lesser fee, and licenses for BTAs ranked 201-493 will pay the lowest fee.⁷⁹ Although the revised framework for assessing BRS regulatory fees was adopted in the *2006 Decision*, the implementation of this new formula will require us to specify how each of the three BTA tiers should be weighted (in terms of fee amounts) relative to the others. We propose to use a weighted average approach based on the *2006 Decision* to establish three tiers of regulatory fees using a 3:2:1 ratio, i.e., 3x for Tier 1, 2x for Tier 2, and 1x for Tier 3, where x equals the base fee amount (Pro-rated FY Revenue Requirement for BRS divided by the weighted total number of BRS payment units). In adopting three fee tiers for BRS, the Commission

⁷³ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14296, ¶ 357 ("BRS/EBS Report and Order and FNPRM").

⁷⁴ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5756-59, ¶¶ 367-376 (2006) ("2006 Decision").

⁷⁵ See *FY 2007 NPRM*, 22 FCC Rcd at 7978, ¶ 8 n.8, citing the *2006 Decision*. The three tiers are based on three categories of Basic Trading Areas ("BTA") population rankings: BTAs 1-60, BTAs 61-200, and BTAs 201-493. For BRS licensees that are licensed by geographic licensed service area (GSA), the BTA is the geographic center point of where its GSA is located. See the *2006 Decision*, 21 FCC Rcd at 5759, ¶ 376.

⁷⁶ *FY 2007 NPRM*, 22 FCC Rcd at 7978, ¶ 8.

⁷⁷ WCA Comments at 1-2.

⁷⁸ See *The 2006 Decision*, 21 FCC Rcd at 5759, ¶ 376.

⁷⁹ *Id.*

considered that BTAs ranked 1-60 generally have a population of greater than one million, BTAs ranked 61-200 generally have population of 250,000 to one million, and BTAs ranked 201-493 have a population of less than 250,000.⁸⁰ The Commission also concluded that the current methodology for assessing regulatory fees for BRS is particularly onerous for rural operators.⁸¹ We seek comment on our proposal and specifically invite commenters to address whether it accurately implements the tiered approach adopted in the *2006 Decision*.

50. The second element of the *2006 Decision* involves setting a fee per megahertz of licensed BRS spectrum. However, throughout the nation, BTA-by-BTA, the BRS radio service and its licensees are in the midst of a multi-year transition to a new band plan that, among other things, is modifying the amount of spectrum designated and licensed for BRS.⁸² Given the complexities associated with this "moving target," we tentatively conclude that the public interest would be best served by implementing the fee per megahertz approach after the BRS transition concludes nationwide. We seek comment on this tentative conclusion.

IV. PROCEDURAL MATTERS

A. Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

51. Consistent with past practice, regulatees whose total FY 2007 regulatory fee liability, including all categories of fees for which payment is due, amounts to less than \$10 will be exempted from payment of FY 2007 regulatory fees.

2. Standard Fee Calculations and Payment Dates

52. The Commission will, for the convenience of payers, accept fee payments made in advance of the window for the payment of regulatory fees. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

- a) Media Services: Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2006 for AM/FM radio stations, VHF/UHF television stations and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2006. In instances where a permit or license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- b) Wireline (Common Carrier) Services: Regulatory fees must be paid for authorizations that were granted on or before October 1, 2006. In instances where a permit or license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- c) Wireless Services: CMRS cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): Regulatory fees must be paid for authorizations that

⁸⁰ *Id.*, 21 FCC Rcd at 5759, n. 947.

⁸¹ *Id.*, 21 FCC Rcd at 5758, ¶ 374.

⁸² The transition plan creates a process for relocating Educational Broadband Service ("EBS") licensees and BRS licensees from their current channel locations to their new spectrum blocks in the Lower Band Segment ("LBS"), Middle band Segment ("MBS"), or Upper Band Segment ("UBS"). The transition occurs by BTA and is undertaken by a proponent or multiple proponents. A proponent(s) must pay the cost of transitioning EBS licensees. The transition occurs in the following three phases: the Initiation Phase, the Transition Planning Phase, and the Transition Completion Phase.

were granted on or before October 1, 2006. The number of subscribers, units or circuits on December 31, 2006 will be used as the basis from which to calculate the fee payment.

The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Attachment D) pay what we refer to as “small multi-year wireless regulatory fees.” Entities pay these regulatory fees in advance for the entire amount of their 5-year or 10-year term of initial license, and only pay regulatory fees again for the license at the time its next renewal. So while we include these eleven categories in our Schedule of Regulatory Fees to publicize the fee amounts, we do not actually collect these fees on an annual basis.

- d) Multichannel Video Programming Distributor Services (cable television operators and CARS licensees): Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2006.⁸³ Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2006. In instances where a CARS license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the license as of the fee due date.
- e) International Services: Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2006. In instances where a license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the license as of the fee due date. Regulatory fees must be paid for international bearer circuits, the payments of which are determined by the number of active circuits as of December 31, 2006.⁸⁴

⁸³ Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, *etc.*) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on “a typical day in the last full week” of December 2006, rather than on a count as of December 31, 2006.

⁸⁴ Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use (“IRU”) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe – International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the FCC web-site at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf). On February 6, 2006, VSNL Telecommunications (US) Inc. filed a Petition for Rulemaking urging the Commission to reform the current International Bearer Circuit Fee rules and policies as applied to non-common carrier submarine cable operators. *See* Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed Feb. 6, 2006). This Petition remains pending before the Commission, which has issued a Public Notice requesting comment on the petition. *See* Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice*, Report No. 2759 (rel. Feb. 15, 2006). The Commission intends to resolve the complex issues presented by this Petition separately, and any comments on these issues filed in the instant proceeding will be incorporated into, and addressed, with those filed on (continued....)

B. Enforcement

53. As a reminder to all licensees, section 159(c) of the Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, a late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Regulatory fee payment must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window, and not merely postmarked by the last day of the window. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the Commission's Red Light Rule (*see* 47 C.F.R. § 1.1910) and the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and 47 C.F.R. § 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

54. Furthermore, our regulatory fee rules provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. *See* 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

C. Final Paperwork Reduction Act of 1995 Analysis

This Report and Order and Further Notice of Proposed Rulemaking contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

D. Congressional Review Act Analysis

55. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

E. Ex Parte Rules

56. *Permit-But-Disclose*. This is as a "permit-but-disclose" proceeding subject to the requirements under section 1.1206(b) of the Commission's rules.⁸⁵ *Ex parte* presentations are permissible

(...continued from previous page)
the Petition for Rulemaking.

⁸⁵ *See* 47 C.F.R. § 1.1206(b); *see also* 47 C.F.R. §§ 1.1202, 1.1203.

if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.⁸⁶ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

F. Filing Requirements

57. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁸⁷ interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) procedures for filing paper copies.⁸⁸

58. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

59. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

60. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word

⁸⁶ See 47 C.F.R. § 1.1206(b)(2).

⁸⁷ See *id.* §§ 1.415, 1.419.

⁸⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

97, and/or Adobe Acrobat.

61. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

V. ORDERING CLAUSES

62. Accordingly, IT IS ORDERED pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 159, and 303(r) that the FY 2007 section 9 regulatory fee assessment requirements ARE ADOPTED as specified herein.

63. IT IS FURTHER ORDERED that Part 1 of the Commission's Rules ARE AMENDED as set forth in Attachment H, and the these Rules shall become effective 30 days after publication in the Federal Register, except that changes to the Schedule of Regulatory Fees made pursuant to section 9(b)(3) of the Communications Act, and incorporating regulatory fee payment obligations for interconnected VoIP service providers, shall become effective 90 days after notification to Congress.

64. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

ATTACHMENT A1

Initial Regulatory Flexibility Analysis

65. As required by the Regulatory Flexibility Act ("RFA"),⁸⁹ the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules in this Further Notice of Proposed Rulemaking ("FNPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated herein. The Commission will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁹⁰ In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.⁹¹

I. Need for, and Objectives of, the Proposed Rules

66. On April 12, 2006, the Commission adopted a number of changes in the rules governing the 2500-2690 MHz band, for the Broadband Radio Service ("BRS") and the Educational Broadband Service ("EBS").⁹² Among other things, the Commission adopted a megahertz ("MHz")-based formula for BRS licensees with tiered regulatory fees based on market size. The FNPRM seeks comment on a new regulatory fee schedule for BRS, based on the tiered structure set forth in the *BRS/EBS Second Report and Order*.

II. Legal Basis:

67. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended ("the Act").⁹³

III. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply:

68. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.⁹⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms, "small business," "small organization," and "small governmental jurisdiction."⁹⁵ In addition, the term "small business" has the same meaning as the

⁸⁹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

⁹⁰ 5 U.S.C. § 603(a).

⁹¹ *Id.*

⁹² See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606 (2006) ("*BRS/EBS Second Report and Order*").

⁹³ 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

⁹⁴ 5 U.S.C. § 603(b)(3).

⁹⁵ 5 U.S.C. § 601(6).

term “small business concern” under the Small Business Act.⁹⁶ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹⁷ A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁹⁸ Nationwide, as of 2002, there were approximately 1.6 million small organizations.⁹⁹ The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁰⁰ The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁰¹ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹⁰² We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”¹⁰³ Thus, we estimate that most governmental jurisdictions are small. Below, we discuss the total estimated numbers of small businesses that might be affected by our regulatory fee proceeding.

69. BRS, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the BRS and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”)).¹⁰⁴ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.¹⁰⁵ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392

⁹⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632. Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

⁹⁷ 15 U.S.C. § 632.

⁹⁸ 5 U.S.C. § 601(4).

⁹⁹ Independent Sector, the New Nonprofit Almanac & Desk Reference (2002).

¹⁰⁰ 5 U.S.C. § 601(5).

¹⁰¹ 5 U.S.C. § 601(5).

¹⁰² U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

¹⁰³ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

¹⁰⁴ *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, ¶ 7 (1995).

¹⁰⁵ 47 C.F.R. § 21.961(b)(1).

incumbent BRS licensees that are considered small entities.¹⁰⁶ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by this regulatory fee proceeding.

70. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in annual receipts.¹⁰⁷ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.¹⁰⁸ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹⁰⁹ Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the regulatory fee decisions we will reach in this proceeding. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.¹¹⁰ Thus, we estimate that at least 1,932 licensees are small businesses. EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

71. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.¹¹¹ Interstate telephone service providers must compute their

¹⁰⁶ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Act, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

¹⁰⁷ 13 C.F.R. § 121.201, NAICS code 517510.

¹⁰⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued Nov. 2005).

¹⁰⁹ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹¹⁰ The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

¹¹¹ The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are Educational Broadband Service (BRS) (previously referred to as instructional television fixed service licensees). Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive-only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than \$10.

annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499-A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

72. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

73. BRS licensees currently are subject to the Commission's regulatory fees. This FNPRM seeks comment on how to revise the current regulatory fee schedule to comply with the tiered regulatory fee schedule required by the Commission in the *BRS/EBS Second Report and Order*. As a consequence of any new regulatory fee structures adopted in this proceeding, BRS licensees may have to provide additional information than they have provided in the past and the regulatory fee schedule for these licensees will be modified.

74. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.¹¹² If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.¹¹³ Further, in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), Public Law 104-134, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.¹¹⁴ Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the DCIA. Appropriate enforcement measures as well as administrative and judicial remedies may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.¹¹⁵

75. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.¹¹⁶ However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

¹¹² 47 C.F.R. § 1.1164.

¹¹³ 47 C.F.R. § 1.1164(c).

¹¹⁴ Public Law 104-134, 110 Stat. 1321 (1996).

¹¹⁵ 31 U.S.C. § 7701(c)(2)(B).

¹¹⁶ 47 C.F.R. § 1.1166.

76. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹¹⁷

77. The Commission is obligated to collect regulatory fees each fiscal year to fund the Commission's operations. For example, the Omnibus Appropriations Act for FY 2007, Public Law 109-383, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Act, has required the Commission to collect for FY 2007.¹¹⁸ With respect to BRS licensees, we are required to implement a tiered regulatory fee schedule based on market size and bandwidth. For this reason, we are seeking comment on an appropriate regulatory fee schedule for these licensees, to be implemented in the next fiscal year. Such a fee structure, when adopted, should result in a lower regulatory fee burden for smaller licensees, based on the licensees' market size and bandwidth.

78. We also note that the Commission's rules provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.¹¹⁹ However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

VI. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

79. None.

¹¹⁷ 5 U.S.C. § 603.

¹¹⁸ 47 U.S.C. § 159(a).

¹¹⁹ 47 C.F.R. § 1.1166.